

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building One Saint Andrew's Plaza New York, New York 10007

August 8, 2008

By Hand Delivery and ECF
Honorable Denise L. Cote
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: <u>United States</u> v. <u>Manaure Tavarez</u>, 07 Cr. 841 (DLC)

Dear Judge Cote:

The Government respectfully writes in response to the Court's inquiry at the July 25, 2008 sentencing proceeding for Manaure Tavarez, with respect to the calculation of his criminal history for plea and sentencing purposes.

On March 4, 2008, Tavarez pleaded guilty to Count One of the above-referenced indictment, charging him with participating in a conspiracy to distribute and possess with intent to distribute five kilograms and more of cocaine, in violation of Title 21, United States Code, Section 846. That crime ordinarily carries with it a mandatory minimum sentence of ten years' imprisonment. See 21 U.S.C. § 841(b)(1)(A).

At the time of Tavarez's guilty plea, Tavarez pleaded guilty pursuant to a plea agreement, in which the parties anticipated that Tavarez would be eligible for the so-called "safety valve" relief, set out in Title 18, United States Code, Section 3553(f), from the otherwise applicable mandatory minimum That plea agreement was based on, among other in this case. things, the parties' belief that Tavarez did not have more than See 18 U.S.C. § 3553(f)(1). one criminal history point. However, in the PSR, the Probation Office noted that Tavarez in fact has three criminal history points (one point stemming from a 2006 youthful offender conviction in New York for unauthorized use of a motor vehicle and two additional points because the defendant was on probation for that offense at the time of the conduct in the instant case). See PSR ¶¶ 32-36.

Following is a summary of the information that I had with respect to Tavarez's criminal history.

Tavarez was arrested on August 8, 2007, at approximately 4:00 p.m., and he was presented before a Magistrate Judge on August 9, 2007. In preparation for his presentment, the Pretrial Services Office prepared a criminal history report for Tavarez, which was distributed to me and counsel for Tavarez, Alan Haber, Esq., who was appointed pursuant to the Criminal Justice Act that day. That criminal history report is the document that the Court marked as Court Exhibit 2 during Tavarez's sentencing proceeding, and a copy is attached hereto as Exhibit 2. Exhibit 2 contains Tavarez's New York youthful offender conviction. On August 9, 2007, I reviewed the criminal history report in preparation for any bail argument that Tavarez might make during his presentment.

On or about September 20, 2007, I produced discovery materials to Tavarez. By September 20, 2007, Tavarez was represented by Paul Brenner, Esq., who had been retained, and I sent the discovery materials to him. The discovery materials included a copy of Exhibit 2. (The bottom right-hand corner of the pages in Exhibit 2 are marked with control numbers 13-16, which are control numbers that I added before sending out that document as part of discovery.)

On January 30, 2008, in connection with ongoing plea negotiations between the parties, I asked John O'Malley, an Investigator employed by the United States Attorney's Office, to run a criminal history record for Tavarez in the federal and New York state databases, to which he has access. In response, Investigator O'Malley provided me with a three-page document containing Tavarez's criminal history in the federal system. This document was marked as Court Exhibit 1 during Tavarez's sentencing proceeding and it is attached hereto as Exhibit 1. In addition, he provided me with a four-page document, attached hereto as Exhibit 3, containing Tavarez's criminal history in the New York state system. Neither Exhibit 1 nor Exhibit 3 contains any reference to Tavarez's New York youthful offender conviction. I believe that I used both Exhibit 1 and Exhibit 3 to prepare a draft of the parties' plea agreement in this case. I do not recall why I did not refer to Exhibit 2 in my preparation of the plea agreement, except that I would usually ask Investigator O'Malley to run a criminal history record for me if I believed that I did not already have one in my files.

I conducted the safety valve proffer of Tavarez on February 4, 2008. I also recently reviewed my notes from that proffer session. I do not recall, during that safety valve proffer session, Tavarez telling me that he had a youthful

offender conviction in New York state. My notes do not reflect that Tavarez provided that information during the safety valve proffer.

On or about February 29, 2008, I prepared a plea agreement and sent it to Mr. Brenner. I believe that I used Exhibits 1 and 3 to prepare the criminal history portion of the plea agreement and, as reflected in those documents, I noted in the draft plea agreement that Tavarez did not have any criminal history points.

On March 4, 2008, Tavarez pled guilty pursuant to the plea agreement which was initially exchanged by the parties on February 29, 2008.

Thank you for your consideration of these matters. Please let me know if any further information would be helpful.

Respectfully submitted,

MICHAEL J. GARCIA United States Attorney

By:

Jessica A. Masella

Assistant United States Attorney

Telephone: (212) 637-2288

cc.: Paul S. Brenner, Esq.
 Counsel for Manaure Tavarez
 (By Facsimile and ECF)

# EXHIBIT 1

All subsequent information is associated with: NYSID - 544615Q

New York State Division of Criminal Justice Services 4 Tower Place Albany, NY 12203-3764

Tel: 1-800-262-DCJS

Denise E. O'Donnell Commissioner of NYS Division of Criminal Justice Services

# Federal NCIC, III and/or FBI Response

### FBI Information

The following is the response received as a result of your request for a III search from the FBI based on:

FBI number: 769782RC8

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ATN/OMALLEYJ
2008-01-30
DATA AS OF
THIS RAP SHEET WAS PRODUCED IN RESPONSE TO THE FOLLOWING REQUEST:
                    769782RC8
FBI NUMBER
REQUEST ID
PURPOSE CODE
                    C
ATTENTION
                    OMALLEYJ
THE INFORMATION IN THIS RAP SHEET IS SUBJECT TO THE FOLLOWING CAVEATS:
THIS RECORD IS BASED ONLY ON THE FBI NUMBER IN YOUR REQUEST-769782RC8.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE. (US; 2008-01-30)
ALL ARREST ENTRIES CONTAINED IN THIS FBI RECORD ARE BASED ON
FINGERPRINT COMPARISONS AND PERTAIN TO THE SAME INDIVIDUAL. (US;
2008-01-30)
THE USE OF THIS RECORD IS REGULATED BY LAW. IT IS PROVIDED FOR OFFICIAL
USE ONLY AND MAY BE USED ONLY FOR THE PURPOSE REQUESTED. (US;
2008-01-30)
SUBJECT NAME(S)
TAVAREZ, MANAURE D
TAVAREZ, MANAURE DEJESUS
                      (AKA)
TAVAREZ, MANUARE DEJESUS
                      (AKA)
TAVAREZ, MANUARE DE JESUS (AKA)
SUBJECT DESCRIPTION
                    STATE ID NUMBER
FBI NUMBER
769782RC8
                    NY0544615Q (NY)
SEX
                    RACE
                    WHITE
MALE
                                        DATE OF BIRTH
HEIGHT
                    WEIGHT
                                     1987-04-16
5108"
                    190
                                        1987-04-06
                    EYE COLOR
                                        FINGERPRINT PATTERN
HAIR COLOR
```

ADDRESS

1000 CUSTER HOLLOW RD CLARKSBURG, WV 26306

\_\_\_\_\_\_

AGENCY

POLICE DEPARTMENT NEW YORK; NY03030W1;

ADDRESS

IDENTIFICATION SECTION 1 POLICE PLZ RM 606

NEW YORK, NY 100381403

\_\_\_\_\_ FBI NEW YORK; NYFBINY00; AGENCY

ADDRESS

23RD FLOOR 26 FEDERAL PLAZA

NEW YORK, NY 102780004

\* \* \* END OF RECORD \* \* \*

EXHIBIT 2

ONT. NEXT PAGE)

ved by RIVERA

30-1230 08/09/07 ROSQ# KUSA 14637 RDSQ# 01100510 PART 002 OF 003 08-09-07 TAVAREZ, MANAURE DEJESUS NYSID 0544615Q TRAN NO 02851

ARREST NFORMATION	! ARREST	/ARRAIGNMEN	T CHARGES	! DISPOSITION AND ! RELATED DATA
	! .			!NUMBER
	!	ARRAIGNMENT	·	
	! !ATTEMPT! !PL 11 !CLASS D	ED GRAND LAF 0/155.40 FEL	RCENY 2 SUB 01 NCIC 2399	! 04-06-06 CRIM CRT QUEENS ! CASE # 2006QN018068 !ARRAIGNED
	! !ATTEMPT !PL 11 !CLASS E	ED BURGLARY 0/140.20 FEL	3 NO SUB NCIC 2299	!
	PL 14	0.35 MISD	LAR TOOLS NO SUB NCIC 2206	! ARRAIGNED!
	!CLASS A	MISD	NCIC 2404	!10-23-06 QUEENS CO SUP CRT ! CASE # UNKNOWN !NOT ARRAIGNED
	PL 14	15.00 MISD	NCIC 2999	!!THE FOLLOWING CHARGE(S): !GR LARCENY-4TH:AUTO OVER \$10 !PL 155.30 SUB 08 !CLASS E FEL NCIC 240
	!UNAUTH !PL 16 !CLASS 2	USE VEH:W/O 55.05 MISD	OWNER CNSN SUB 01 NCIC 2411	T! !CRIMINAL MISCHIEF-3RD !PL 145.05 NO SUB !CLASS E FEL NCIC 299
	!UNAUTH !PL 16 !CLASS 7	USE OF VEHI 55.05 A MISD	CLE-3RD NO SUB NCIC 2411	!AUTO STRIPPING-3RD !PL 165.09 SUB 01 !CLASS A MISD NCIC 230
				! CRIM POSSESSION STOLN PROP-! PL 165.40 NO SUB! CLASS A MISD NCIC 280
				! ! PROBATION DATA !10-23-06 SENTENCE DATE ! PROB KINGS 2ND TERM ! REG # 3202286 !10-22-09 MAX EXP DATE !
 DT/PL 06-12- D 7	-07!			! - DISPOSITION !06-12-07 CRIM COURT NEW YO

ERE AN INDIVIDUAL IS SENTENCED JUNE 1, 1981, OR LATER, ON MORE THAN ONE ARGE WITHIN A DOCKET, THE SENTENCES MAY BE CONSIDERED TO BE CONCURRENT LESS IDENTIFIED AS CONSECUTIVE.

S RESPONSE IS BASED ON A NYSID NUMBER SUPPLIED BY YOUR AGENCY.

ALL ENTRIES ARE AS COMPLETE AS THE DATA FURNISHED TO DCJS.

DENISE E. O'DONNELL, COMMISSIONER

EXHIBIT 3

# Repository Inquiry

To: OMALLEYJ For: massella Case No: i082260 - NYSID No: 00544615Q - CRI

New York State Division of Criminal Justice Services 4 Tower Place Albany, NY 12203-3764 Tel: 1-800-262-DCJS

Denise E. O'Donnell Commissioner of NYS Division of Criminal Justice Services

Identification Criminal History Summary Job/License Wanted Missing NCIC/III Attention - Important Information \* See Additional Information at the bottom of this response for more banners pertaining to the criminal history This NYSID Number was used previously and is now reassigned to this individual. Wanted information included in this record. Identification Information Name: MANAURE TAVAREZ Date of Birth: Apr 16, 1987 Place of Birth: Dominican Republic Address: 422 SOUTH 4 STRE, BROOKLYN, NY Sex: Race: Ethnicity: SkinTone: Male White Dark/Medium Hispanic Eve Color: Hair Color: Height: Weight: Brown Black 5' 08" 190 SSN: Probation Client ID#: NCIC Classification: NYSID#: FBI#: 00544615Q 769782RC8 1712055 III status: Criminal record in other states or in multiple FBI files for NYS Summary Information MANAURE TAVAREZ Total Arrests: Name:

Date of Last Arrest:June 12, 2007

Date of Earliest Arrest: June 12, 2007

Total Arrests Charges:		
Felony:		
Violent Felony:		
Firearm:		
Misdemeanor:		
Other:		

Total Convictions:	0	Total Open Charges:	2
Felony:		Felony Open Charges:	2
Violent Felony:	0	Open Misdemeanor(s):	0
Firearm:	0	Other Open Charges:	0
Misdemeanor:	0		
Other:	0		
YO Adjudication(s):	0		

Warrant Information:	
Failure to Appear Counts:	1
Open Warrants:	1

<b>Revocation Counts:</b>	П
Probation:	0
Parole:	0

Miscellaneous:		
Escape Charges:	0	
Sex Offender Convictions:	0	

## NYS Criminal History Information

Cycle 1

**Arrest/Charge Information** 

Arrest Date: June 12, 2007 11:31 am (11:31:00)

Name:

MANAURE TAVAREZ

Date of Birth:

April 16, 1987

Sex: Race: Male White Hispanic

Ethnicity:

Age at time of crime/arrest:20 Address: 422

422 SOUTH 4 STRE, BROOKLYN, NY

Fax Number

41480 NYCPD 7

Place of Arrest: Arrest Type:

Unknown June 12, 2007

Date of Crime: Place of Crime:

NYCPD 7

Criminal Justice

Tracking No.:

59177261P

Arresting Agency:

NYCPD PCT 007

Arresting Officer ID:

934800

**Arrest Number:** 

M07651390

**Arrest Charges:** 

-- Criminal Possession Controlled Substance-5th:Intent To Sell

PL 220.06 Sub 01

Class D Felony Degree 5

NCIC 3599

-- Possession Forged Instrument-2nd Degree

PL 170.25

Class D Felony Degree 2 NCIC 2506

-- Operating A Motor Vehicle Without Inspection Certificate

VTL 0306 Sub B

Infraction Degree 0

NCIC 5499

#### **Court Case Information**

-- Court: New York County Criminal Court Case Number: 2007NY044689

Arraigned June 12, 2007

-- Criminal Possession Controlled Substance-5th:Intent To Sell

PL 220.06 Sub 01

Class D

Felony

NCIC 3599

-- Possession Forged Instrument-2nd Degree

PL 170.25

Class D

Felony

**NCIC 2506** 

Initial Report Of Docket Number June 12, 2007

Bench Warrant Issued, Disposition Pending October 03, 2007

## Other History Related Information

1

There is no Other History Related Information associated with this history.

### Job/License Information

1

There is no Job/License Information associated with this history.

#### Wanted Information

4

CAUTION: Wanted results are based on a comparison of Name, Physical and Numeric Descriptors, and not on a comparison of Fingerprints.

#### Warrant: 1 of 1

#### **Associated Charge:**

-- Criminal Possession Controlled Substance- 5th Degree

PL 220.06

Class D

Felony Degree 5

NCIC 3599

Wanted By: NYCPD Warrant Section-Central Warrant Unit(NY03030W1)

300 Gold Street

Room 210

Brooklyn, NY 11201 (718)330-2227

Warrant Data:

Name: MANAURE D TAVAREZ

Date of Birth: April 16, 1987

Sex:

Race:

Skin Tone:

Male

Unknown

Light

Eye Color: Hair Color:

Height:

Weight:

Brown

Black

5' 08"

190

Primary Social Security#: 092-76-7330

NYSID#:

FBI#:

Docket #:

WPR#:

Originating Agency Case#:

00544615Q 769782RC8

2007NY044689

7916295

V07100706

**NCIC Number:** 

W703156735

Misc Data:

The Name, DOB, FBI Number, NYSID, Sex, are similar to the data included in your request.

Date of Warrant:

October 03, 2007

Type of Warrant: Bench Warrant

Date of Entry Onto State Files:October 04, 2007

Status of Warrant:

Issued - a warrant has been

signed by an empowered authority

The wanting agency has indicated it will extradite throughout New York State and outside the state..

Please Contact the Wanting Agency immediately to determine if this is the same individual and confirm the condition of extradition. Refer to their Case Number, Warrant Number and Area Responsible.

## Missing Person Information

1

There is no NYS Missing Person Information associated with this history.

### Additional Information



Caution: Identification not based on fingerprint comparison. This record was produced as the result of an inquiry.

Multi-Source - Subject has information maintained by other states or in multiple NYS files maintained by the FBI available through the Interstate Identification Index. Refer to FBI Number: 769782RC8

Sentencing - Where an individual is sentenced June 1, 1981 or later on more than one charge within a docket, the sentence may be considered to be concurrent unless identified as consecutive.

# Federal NCIC, III and/or FBI Response



The outstanding response(s) indicated below will be forwarded to your in-box upon receipt by DCJS. If you do not receive one or more of the indicated responses, please contact that state or agency directly.

- NCIC Person Files
- NCIC Protection Order File
- III Record Request

WARNING: Release of any of the information presented in this computerized Case History to unauthorized individuals or agencies is prohibited by federal law TITLE 42 USC 3771b.

This report is to be used for this one specific purpose as described in the Use and Dissemination Agreement your agency has on file with DCJS. Destroy after use and request an updated rap sheet for subsequent needs. All information presented herein is as complete as the data furnished to DCJS.